(1)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

M.C.C. No. 370/2007

APPLICANT The Oriental Insurance Company Through: Divisional Manager, Malwiya Nagar, Durg, Tahsil and District Durg (CG)

versus

RESPONDENTS

1. Birjha Bai W/o Late Kartik Ram, Aged about 45 years, R/o Village Samoda, Post Karanjai, Bhilai, Tahsil & District Durg (CG)

2. Beduram Sinha, S/o Unknown, R/o Village Chikhli, P/S Mohan Nagar, Durg, District Durg (CG).
   Through: Goverdhan Sahu, S/o Chowaram, R/o Village Karhidih, Tahsil and District Durg (CG).
   Occupation – Tractor Driver, Tractor No. CG 04/ZQ/4490 & Trolley No. CG 04 /ZQ/4491.

3. Goverdhan Sahu, S/o Chowaram R/o Village Karhidih, Tahsil and District Durg (CG)
   Occupation Tractor Owner, Tractor No. C.G. 04/ZQ/4490 & Trolley No. CG 04/ZQ/4491

Application under Order 41 Rule 21 of the C.P.C.

Present : Shri Vipin Tiwari, counsel for the applicant/insurance company.

ORAL ORDER
(Passed on 12th September, 2007)

Heard on admission.

(2) The applicant/insurance company has filed an application under Order 41 Rule 21 of the C.P.C. for re-hearing of Miscellaneous Appeal (C.) No.22/2007.

(3) Miscellaneous Appeal (C.) No.22/2007 was finally heard and allowed on 24-08-2007. The applicant/insurance company was served with a notice and Vakalatnama had also been filed. Learned counsel for the applicant/insurance company did not appear when the appeal was called for hearing. Since no one appeared for the owner and the driver of the offending vehicle, the appeal was finally heard and allowed.

(4) Learned counsel for the applicant/insurance company has pressed the application only on one ground, i.e., on 24.08.2007, he was present in Court upto 3:00 P.M. and had left the Court since he was not well. Grounds No.3 and 4 in the application were not pressed by learned counsel for the applicant/insurance company.

(5) Miscellaneous Appeal (C.) No.22/2007 was filed by the claimant for enhancement of compensation awarded by the Xth Additional Motor Accidents Claims Tribunal, Durg in Claim Case No.132/2005. On 24.08.2007, when the appeal was finally heard, no one appeared for the owner, driver or the insurance company.

(6) It was the duty of the counsel for the insurance company, if he was present in Court, to inform the Court about leaving the Court due to illness. Nothing of the sort was done by the learned counsel for the applicant. The applicant/insurance company had notice. Vakalatnama had been filed. Counsel was admittedly present in Court on 24.08.2007 till 3:00 P.M. There is nothing to substantiate that he was prevented by sufficient cause from appearing before the Court at the time of hearing. No medical certificate has been filed.

(7) In this view of the matter, I do not find any sufficient cause for granting the application under Order 41 Rule 21 of the C.P.C. The application, i.e., the M.C.C. is accordingly dismissed at the stage of admission.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr